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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120306154-2241-02]

RIN 0648-XC162

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit from one to three large medium or giant BFT for the September, October-November, and December time periods of the 2012 fishing year, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category permitted vessels and to Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: Effective September 1, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50

CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS Fishery Management Plan (Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for 2011 and for 2012 of 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The 2011 BFT quota rule (76 FR 39019, July 5, 2011) established a quota of 435.1 mt for the General category fishery (the commercial tunas fishery in which handgear is used). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Through a November 2011 final rule implementing adjustments to the BFT General and Harpoon category regulations (76 FR 74003, November 30, 2011), the January BFT fishery may remain open until the January subquota is reached or March 31 (whichever happens first). Consistent with the allocation scheme established in the Consolidated HMS FMP and implementing regulations, the baseline category subquotas were established in the 2011 BFT quota rule as follows: 23.1 mt for January; 217.6 mt for June through August; 115.3 mt for September; 56.6 mt for October through November; and 22.6 mt for January. Although NMFS published quota specifications for 2012 (77 FR 44161, July 27, 2012), the

baseline General category quota and subquotas as codified have not changed from the amounts established for the 2011 fishing year.

Unless changed, the General category daily retention limit starting on September 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit applies to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal BFT distribution, abundance, or migration patterns; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds. Unused General category quota rolls forward within a fishing year to the subsequent subquota time period, e.g., from the June through August period to the September period, and so on.

For the 2011 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: two large medium or giant BFT for the January subquota period (75 FR 79309, December 20, 2010); three large medium or giant BFT

for June through November 5 (76 FR 32086, June 3, 2011; and 76 FR 52886, August 24, 2011); and two large medium or giant BFT for November 6 through December 31, 2011 (76 FR 69137, November 8, 2011). The November 2011 adjustment was in conjunction with an inseason quota transfer of 50 mt from the Reserve category to the General category.

NMFS adjusted the limit for the 2012 January subquota period from the default level of one large medium or giant BFT to two large medium or giant BFT (76 FR 76900, December 9, 2011). That retention limit was effective from January 1, 2012, until January 22, 2012, when NMFS closed the fishery because the January subquota had been met (77 FR 3637, January 25, 2012). For the June through August 2012 period, NMFS adjusted the limit to three large medium or giant BFT (77 FR 28496, May 15, 2012).

NMFS has considered the criteria at § 635.27(a)(8) and their applicability to the General category BFT retention limit for the September through December 2012 General category fishery. These considerations include, but are not limited to, the following: Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. As this action would be taken consistent with the quotas previously established and analyzed in the 2011 BFT quotas final rule (76 FR 39019, July 5, 2011), and consistent with objectives of the Consolidated HMS FMP, it is not expected to negatively impact stock health. A principal consideration is the objective of providing opportunities to harvest the full General category quota without exceeding it based upon the Consolidated HMS FMP goal: “Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities,

preserving traditional fisheries, and taking into account the protection of marine ecosystems.”

Commercial-sized BFT migrated to the fishing grounds off New England by early June and are actively being landed. Lastly, despite the three-fish daily retention limit, 2012 General category landings remain low.

As of August 14, 2012, 137.3 mt of the 2012 General category quota of 435.1 mt have been landed, and landings rates remain at approximately 1 mt per day. Given the rollover of unused quota from the one time period to the next, current catch rates, and the fact that the daily retention limit will automatically revert to one large medium or giant BFT per vessel per day on September 1, 2012, absent agency action, NMFS anticipates the full 2012 General category quota may not be harvested. However, based on the pattern exhibited over the last few years, NMFS anticipates an increase in both landings of BFT (in number) and average fish weight for the remainder of the year, relative to the same period of 2011, such that a continued three-fish limit may result in higher landings than in previous years.

A lower retention limit could result in unused quota being added to the later portion of the General category season (i.e., rolling forward to the subsequent subquota time period). Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time period to the next. Increasing the daily limit from three to four or five fish, however, may risk exceeding the available General category quota. As referred to above, by late October 2011, NMFS determined that the General category had reached 95 percent of its 2011 quota of 435.1 mt under the three-fish limit that was in effect. In order to extend fishing opportunities and allow continued collection of biological samples from General category landings throughout the remainder of 2011, NMFS transferred 50 mt of available quota

from the Reserve to the General category and reduced the daily retention limit from three to two fish in November 2011 (76 FR 69137, November 8, 2011).

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help achieve optimum yield in the General category BFT fishery, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the Consolidated HMS FMP. Therefore, NMFS increases the General category retention limit from the default limit to three large medium or giant BFT per vessel per day/trip, effective September 1, 2012, through December 31, 2012.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the Federal Register. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access www.hmspermits.gov, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the needed data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have

negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective September 1, 2012, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 et seq.

Dated: August 28, 2012.

Lindsay Fullenkamp,
Acting Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

